ago might be at fault whilst recollection as to the real nature of the transactions remains vivid and accurate.

Again the Defendants relied upon the Letter of Hypothecation which the Brokers gave them and which included the shares in question as showing that the Brokers must have regarded the shares as their property but I do not think that it necessarily goes so far as that. If as I have found the Brokers and the Defendants were both aware of the limited interest which the Brokers had in these shares it would follow that if the Defendants sold the shares as empowered by the Letter they would have to account to the Brokers for the balance realised over and above the amount of the mortgage debt. Whether under the circumstances the Brokers ought to have included these shares in the Letter is another matter. They may have realised that the Plaintiff having deposited the shares by way of equitable mortgage was entitled if he insisted to redeem the identical shares.

Finally Mr. Cobbett argued that it is impossible for the Defendants to re-deliver the shares to the Plaintiff as they are no longer in their possession having been sold, split up or otherwise disposed of. This was not pleaded and Mr. Eber quite properly objected to the point being raised. Even if it had been pleaded it could not have affected the decision in this case. The Defendants' case at the outset was that the Plaintiff must pay the full market value. They did not say that they had parted with possession of the shares. Their books show that they had shares or their equivalent in their possession upon the date when the Plaintiff sought to redeem them. Their objection was that he would not pay enough for them.

On the authority of *Langton* v. *Waite*, L.R. (1868) 6 Equity 165 it would appear that the Plaintiff was entitled to recover from the Brokers the identical shares deposited and similarly that the Brokers on the facts as I have found them were likewise entitled to demand the identical shares from the Defendants. If the Defendants no longer have the identical shares the Plaintiff will no doubt be satisfied with their equivalent but that is a matter for arrangement between them.

I was referred to the case of *Macphail & Co. Ipoh* v. *The P. & O. Banking Corporation* but as the facts in that case are distinguishable from those in the present case I have not regarded it as binding upon me. The conclusion at which I have independently arrived at is however that although the facts are different the legal position is the same as found by Terrell, J. in that case namely that when shares in the names of third parties are deposited by brokers as security against their overdraft, the value of the security depends on the original intention of the transferor in handing them to the broker. If the shares were handed to the broker for the purpose of sale or pledge, the true owner cannot set up against the bank any limit upon the authority which he gave his agent, provided that the banker is a holder for value without notice. If, on the other hand, the relation was merely that of mortgagor and mortgagee the mortgagee can, indeed, under the ordinary law, and without any authoritty from the mortgagor, sub-mortgage them to the bank, but the security, which the bank obtains, will be limited to the amount owing by the mortgagor to the mortgagee.

There will be judgment for the Plaintiff with costs.

There will be:

(a) a Declaration that the deposit of the share Certificates relating to the shares particularised in the List attached to the Statement of Claim by the Brokers with the Defendants conferred no better title on the Defendants than that held by the said Rose Macphail & Penman Limited.

(b) an order that upon payment to the Defendants of the monies due by the Plaintiff to the Brokers upon the mortgage the Defendants do deliver to the Plaintiff all documents relating to the said 2400 shares in the Raub Australian Gold Mining Coy., Ltd., 30,000 shares in the Malayan Consolidated Tin Dredging Coy., Ltd., and 31,977 shares in the Menglembu Lode Coy., Ltd.

Judgment accordingly.

Solicitors for the Plaintiff—*Chan & Eber.*

Solicitors for the Defendants—*Rodyk & Davidson.*

(Revisional Civil Jurisdiction)

Murison, C.J.

March 19, 1933.

BIKARAMA SINGH

vs.

SHIVABALAK SHAH

(District Court Case No. 426 of 1933)

(Application for Revision No. 6 of 1933)

Courts—District Court—appeal or revision—"amount in dispute"—retrial—Ordinance No. 101 (Courts) Ss. 13 (1), 38(1).

Where a plaintiff succeeded on his claim and a defendant on his counterclaim and the amount of the claim was $90/- and that of the counterclaim, $41.59:—

Held, that "the amount in dispute in the action" was the amount of the claim added to the amount of the counterclaim, and that the Assistant District Judge had no jurisdiction to try the case.

APPLICATION before Murison, C.J. for revision of Judgment given by the Assistant District Judge.

The facts are shown in the order below.

The parties were not represented by Counsel.

Cur. Adv. Vult.

Murison, C.J.—The applicant in this case sued the defendant in the District Court for $90, wages due. The defendant counterclaimed for $41.59. Judgment was given against the applicant on his claim and for the defendant on his counterclaim.

The applicant now applies for revision of this judgment.

Section 13 (1) of the Ordinance No. 101 (Courts) is as follows:

> "13(1). No appeal shall lie from the decision of a District Court when the amount in dispute in the action or suit or the value of the subject matter thereof does not exceed one hundred dollars, but the Supreme Court, either of its own motion or on the application within fourteen days of any party aggrieved by a decision on the ground that such decision is wrong in law, may call for the proceedings and may give such orders thereon, either by directing a new trial or otherwise as seems to be necessary to secure substantial justice being done."

The question is whether "the amount in dispute in the action" in this case exceeds $100 that is whether it is $90 or $90 plus $41.59.

In my opinion the amount in dispute is the amount of the claim added to the amount of the counterclaim, for both sums are in dispute; that is, the amount of $131.59 is in dispute.

The case, therefore, is one for appeal not revision.

The application is dismissed.

It follows from what I have said that the Assistant District Judge had no jurisdiction (under section 38 (1) of the Ordinance No. 101 (Courts) to try this case.

I, therefore, order that the case be retried before the District Judge.

Order accordingly.

(Original Civil Jurisdiction)

Murison, C.J. and Whitley, J.

February 20, 1933.

IN *RE* ORDINANCE NO: 101 (COURTS)

and

IN *RE* A SOLICITOR

(Penang Originating Motion No. 15 of 1932)

Solicitor—neglect to procure registration of deeds—fees and expenses paid by client—partnership with unqualified person—Ordinance No. 101 (Courts) Ss. 90 (5) (b), 91 (b), and (i).

A Solicitor is not guilty of professional misconduct in not having procured the registration of certain title deeds although he has received money from his clients for that purpose.

In re A Solicitor, (1895) 11 T.L.R. 169 applied.

The fact of a partnership between a Solicitor and an unqualified person is not sufficient ground for striking the Solicitor off the rolls of the Court. The only penalty attaching to such an offence is a fine up to $500/-. The particular provision of Section 90 (5) (b) of Ordinance No. 101 (Courts) prevails over the general provision of Section 91 (2) (i) of the same Ordinance. A charge under Section 90 (5) (b) of the Courts Ordinance is not a subject for enquiry by a Bar Committee.

Where it is proved that a Solicitor permits an unqualified person to use his name in non-contentious business, such conduct will not justify an order to strike the Solicitor off the rolls.

MOTION by the Penang Bar Committee for an order calling upon the Respondent to show cause why he should not be struck off the rolls. The grounds of complaint are fully set out in the Judgment below.

Hume for the Penang Bar Committee.

The Respondent appeared in person.

Cur. Adv. Vult.

The Judgment of the Court was delivered by—

Murison, C. J.—This is a motion by the Penang Bar Committee calling upon the Respondent, an Indian advocate and solicitor of this Court, to show cause why he should not be struck off the Roll under section 91 subsection (2) clauses (b) (h) and (i) of Ordinance No. 101 (Courts) and why he should not pay the costs of the motion.

The relevant clauses of Ordinance No. 101 (Courts) are as follows:—

> 91.—(1) Solicitors and conveyancers shall be subject to the control of the Supreme Court, and shall be liable, on due cause shown, to be suspended from practice for any period not exceeding two years or struck off the roll of the Court.
>
> "(2) Such due cause may be shown by proof that such person
>
> (b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty;
>
> (h) allows any clerk or other unqualified person to undertake or carry on legal business in his name, such other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision; or
>
> (i) has done some other act which would render him liable to be disbarred or suspended or struck off the rolls of the Court if a barrister or solicitor in England."

Mr. Hume appeared for the Bar Committee of Penang. The Respondent appeared in person.

The title of the proceedings was altered during the hearing by the substitution of the words "An advocate and solicitor" for the Respondent's name.

The motion is supported by an affidavit sworn by Mr. Paul Regester, an advocate and solicitor of this Court, and Secretary of the Penang Bar Committee.

It sets out that the Respondent practises in the State of Perak, one of the F.M.S., and in the Dindings which are part of this Colony.

It further states the following facts.

On the 29th July, 1932 the Penang Bar Committee received two complaints, one from Vellayappa Chetty living at Lumut in the Dindings and the other from Palaniappa Chetty of the same address. Both alleged